

# CRAVATH, SWAINE & MOORE

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RECORDATION NO. 11217  
FILED 1425  
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DEC 19 1979 - 1 55 PM  
TELEX  
ISA 233663  
D 125547  
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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 11217  
FILED 1425

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INTERSTATE COMMERCE COMMISSION

Ralston Purina Company

Lease Financing Dated as of December 1, 1979  
11-3/8% Conditional Sale Indebtedness Due 1994

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a) and the Commission's rules and regulations thereunder, enclosed for filing and recordation on behalf of Ralston Purina Company are counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of December 1, 1979, between Trinity Industries, Inc., and Mercantile-Safe Deposit and Trust Company, as Trustee;

(b) Agreement and Assignment dated as of December 1, 1979, between Trinity Industries, Inc., and St. Louis Union Trust Company, as Agent; and

2. (a) Lease of Railroad Equipment dated as of December 1, 1979, between Mercantile-Safe Deposit and Trust Company, as Trustee, and Ralston Purina Company; and

(b) Assignment of Lease and Agreement dated as of December 1, 1979, between Mercantile-Safe Deposit and Trust Company, as Trustee, and St. Louis Union Trust Company, as Agent.

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RECORDATION NO. 11217  
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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 11217  
FILED 1425  
DEC 19 1979 - 1 55 PM

No. 9-333-11217  
Date DEC 19 1979  
Fee \$ 100.00

ICC Washington, D. C., December 19, 1979

The names and addresses of the parties to the  
aforementioned Agreements are as follows:

1. Agent-Vendor:

St. Louis Union Trust Company  
510 Locust Street  
St. Louis, Missouri 63101

2. Trustee:

Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza  
Baltimore, Maryland 21203

3. Builder:

Trinity Industries, Inc.  
4001 Irving Boulevard  
Dallas, Texas 75207

4. Lessee:

Ralston Purina Company  
Checkerboard Square  
St. Louis, Missouri 63188.

Please file and record the documents referred to  
above and cross-index them under the names of the Agent-  
Vendor, the Trustee, the Builder and the Lessee.

The equipment covered by the aforementioned  
documents consists of the following:

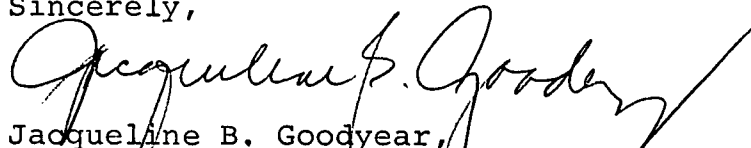
50 100-ton, 4,750 cubic foot truck gravity-  
discharge covered hopper cars, AAR Mechanical  
Designation LO, bearing identifying numbers PLMX  
11186 through PLMX 11235, both inclusive.

Also enclosed is a check for \$100 payable to the  
order of the Interstate Commerce Commission, representing  
the fee for recording the Conditional Sale Agreement and  
related Agreement and Assignment (together constituting  
one document) and the Lease of Railroad Equipment and  
related Assignment of Lease and Agreement (together  
constituting one document).

Please stamp all counterparts of the enclosed documents, retain one copy of the documents for your files and forward the remaining counterparts to me.

Thank you for your assistance.

Sincerely,



Jacqueline B. Goodyear,  
As Agent for Ralston Purina Company

Ms. Agatha L. Mergenovich,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

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RECORDATION NO. 11217-1 B  
Filed 1425

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INTERSTATE COMMERCE COMMISSION

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[CS&M Ref. 5566-001]

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1979

between

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
International Paper Leasing Corporation,

and

RALSTON PURINA COMPANY,  
Lessee.

[Covering 50 4,750 cubic foot Covered Hopper Cars]

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# LEASE OF RAILROAD EQUIPMENT

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\* This Table of Contents has been included for convenience only and does not form a part of this document.

LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1979, between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, acting not in its individual capacity but solely as trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with INTERNATIONAL PAPER LEASING CORPORATION, a Delaware corporation ("Owner"), and RALSTON PURINA COMPANY, a Missouri corporation ("Lessee").

The Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with TRINITY INDUSTRIES, INC. ("Builder"), pursuant to which the Builder has agreed to manufacture, conditionally sell and deliver to the Trustee the units of railroad equipment described in Appendix A hereto ("Equipment").

The Builder is assigning certain of its interests in the CSA pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") to ST. LOUIS UNION TRUST COMPANY, acting as agent ("Agent") for THE FRANKLIN LIFE INSURANCE COMPANY ("Original Investor" and, together with its successors and assigns, "Investors") under a Participation Agreement dated as of the date hereof ("Participation Agreement") between the Lessee, the Agent, the Owner, the Trustee and the Original Investor.

The Lessee will lease from the Trustee such units of Equipment as are delivered and accepted and settled for under the CSA ("Units") upon the terms and conditions hereinafter provided. The Trustee will assign certain of its rights under this Lease for security to the Agent pursuant to an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

In consideration of the agreements hereinafter set forth, the Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

#### § 1. NET LEASE

This Lease is a net lease. Each of the Lessee's obligations to pay all rentals and other amounts hereunder

shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, including but not limited to abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Trustee or the Owner under this Lease or the CSA or otherwise including the Lessee's rights by subrogation thereunder against the Builder, the Agent or otherwise (and including any claims of the Lessee against Railcar Service, Inc., pursuant to the service contract covering the Units); nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Trustee or the Lessee be otherwise affected by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Builder, the Trustee, the Owner or the Agent for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Trustee under the CSA

shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States at which such Unit is so delivered to the Trustee. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Trustee under the CSA and on behalf of itself hereunder and to execute and deliver to the Trustee a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease; provided, however, that the delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 3.3 thereof or Section 4 of the CSA Assignment shall be ineffective to subject such unit to this Lease. The Lessee hereby represents and warrants to the Trustee that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee or its agent as agent for the Trustee hereunder.

### § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Trustee, as rental for each Unit subject to this Lease, (a) one interim rental payment on the Closing Date (as defined in Section 4.2 of the CSA) and (b) thereafter 180 consecutive monthly payments, in advance, commencing on January 1, 1980, and payable on the first day of each of the 179 months thereafter. The interim rental payment for each Unit subject to this Lease shall be in an amount equal to 0.0285% of the Purchase Price (as defined in Section 4.1 of the CSA) of such Unit for each day elapsed from and including the date of acceptance thereof to but not including January 1, 1980. The 180 monthly rental payments for each Unit subject to this Lease shall each be in an amount equal to 0.8831% of the Purchase Price of such Unit. \*

3.2. Payment on Nonbusiness Day. If any of the rental payment dates referred to in § 3.1 is not a business day, the rental payment otherwise payable on such date shall be payable on the succeeding business day. The term



"business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, St. Louis, Missouri, or New York, New York, are authorized or obligated to remain closed.

3.3. Instructions To Pay Agent and Trustee. Upon execution and delivery of the Lease Assignment and until the Agent shall have advised the Lessee in writing that all sums due from the Trustee under the CSA have been fully satisfied and discharged, the Trustee irrevocably instructs the Lessee and the Lessee agrees to make all the payments provided for in this Lease to the Agent (other than payments not assigned to the Agent under the Lease Assignment), for the account of the Trustee, in care of the Agent, with instructions to the Agent (a) first to apply such payments to satisfy the obligations of the Trustee under the CSA known to the Agent to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Trustee or to the order of the Trustee in immediately available funds at such place as the Trustee shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Agent in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied, the installments of rental due hereunder and any Casualty Payments thereafter due pursuant to § 7 hereof shall be made to the Trustee in immediately available funds in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 hereof in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance thereof pursuant to § 2 hereof and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on December 31, 1994. The obligations of the Lessee hereunder (including but not limited to the obligations under §§ 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. All rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Agent is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession and use provided under § 15 hereof.

#### § 5. IDENTIFICATION MARKS

The Lessee will, at its own expense, cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto or, in the case of any Unit not there listed, such identification number as shall be set forth in any supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Trustee's title to and the Agent's security interest in such Unit. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on each side thereof and will replace promptly any such words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Agent and the Trustee and filed by the Lessee in all public offices where this Lease and the CSA shall have been filed and (ii) the Lessee shall have furnished the Agent and the Trustee an opinion of counsel to the effect that such statement has been so filed, such filing will protect the Agent's and the Trustee's interests in such Units and no filing with or giving of notice to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Agent and the Trustee in such Units.

The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

#### § 6. GENERAL TAX INDEMNIFICATION

The Lessee assumes responsibility for and agrees to pay and agrees to protect, save, keep harmless and indemnify the Trustee, the Owner and the Agent and their successors and assigns ("Indemnified Persons") against all taxes, assessments, fees, withholdings and other governmental charges of any nature whatsoever, including without limitation penalties and interest (all such taxes, assessments, fees, withholdings, governmental charges, penalties and interest called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of or with respect to this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for any Federal, state and local taxes measured by net income based upon the Trustee's receipt of payments provided for herein (other than payments due the Trustee under this § 6 for which the Trustee is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within 10 days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that the Lessee shall not be required to pay any Taxes so long as it is contesting such taxes in good faith and by appropriate legal or administrative proceedings and the nonpayment thereof does not, in the

reasonable opinion of the Trustee or the Agent, adversely affect the title, property or rights of the Trustee hereunder or the Agent under the CSA. The Lessee agrees to give the Trustee and the Agent notice of such contest within 30 days after institution thereof and the Trustee agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any Tax shall have been charged or levied against the Trustee directly and paid by the Trustee, the Lessee shall reimburse the Trustee on presentation of an invoice therefor.

In the event that the Trustee shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall upon demand pay such additional amounts (which shall also be deemed Taxes hereunder) to the Trustee as will enable the Trustee to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Trustee and the Agent in such Units; provided, however, that to the extent permitted by law, the Lessee shall file such returns, statements and reports relating to sales or use taxes and taxes, fees and charges on or measured by the Trustee's earnings or gross receipts arising from the Units or the value added by the Trustee thereto with respect to any state of the United States or political subdivision thereof as the Lessee shall determine are required to be filed and as shall be prepared by the Lessee, and shall promptly pay such taxes, fees and charges when due. To the extent that the Trustee has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee, and, if necessary, the Trustee will request from the appropriate taxing authorities the information that the Lessee deems necessary in filing such tax reports or in appealing any tax assessments.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Trustee hereby authorizes the Lessee to act in the name of the Trustee and on its behalf; provided, however,

that the Lessee shall indemnify and hold the Trustee harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of or incident to any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Trustee, submit to the Trustee copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Trustee of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Trustee reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

The Lessee covenants and agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

All of the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding the expiration of this Lease.

#### § 7. CASUALTY OCCURRENCES; INSURANCE; ECONOMIC OBSOLESCENCE

7.1. Definition of Casualty Occurrence; Payments.  
In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or for an indefinite period, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days prior to the return of such Unit in the manner set forth in § 14 or 17 hereof (each such occurrence called a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Trustee and the Agent with respect thereto. On the next succeeding rental payment date (each such date called a "Casualty Payment Date"), the Lessee shall

pay to the Trustee a sum equal to the Casualty Value (as defined in § 7.5 hereof) of any such Unit as of such Casualty Payment Date, plus the rental in respect of such Unit accrued as of such Casualty Payment Date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Trustee shall be entitled to recover possession of such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 17 hereof, the Lessee shall promptly and fully notify the Trustee with respect thereto and pay to the Trustee (in addition to any amounts due pursuant to § 17 hereof) an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Trustee shall be entitled to recover possession of such Unit.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred and in the event of termination of this Lease, the Lessee will comply with all provisions of § 14 or 17 hereof, as the case may be, except that the Lessee will not be obligated to return such Unit until return thereof to the Lessee. All payments received by the Trustee or the Lessee from the United States Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to or retained by the Lessee; provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing. All payments received by the Trustee or the Lessee after the term of this Lease or any renewal thereof shall be paid over to or retained by the Trustee.

7.3. Lessee Agent for Disposal. The Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease at the best price obtainable on an "as is, where is" basis. Provided that the

Lessee has previously paid the Casualty Value to the Trustee, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit and shall pay any excess to the Trustee.

7.4. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite the numbered Casualty Payment Date next succeeding the actual date of such Casualty Occurrence or, if there is no such numbered Casualty Payment Date, the last rental payment date; but in no event shall such amount be less than the "Casualty Value" (as defined in Section 7.3 of the CSA) as of such Casualty Payment Date.

7.5. No Release. Except as provided in this § 7, the Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence, and shall bear the risk of any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.6. Insurance To Be Maintained. (a) The Lessee will at all times prior to the return of the Equipment to the Trustee, at its own expense, cause to be carried and maintained public liability insurance providing coverage of not less than \$10,000,000 with respect to third-party personal injury and property damage and may, at its option, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto; provided, however, that if, in the reasonable opinion of the Trustee or the Agent, the Lessee's financial condition has materially changed from its condition as of the date hereof such that property insurance is required to assure the Lessee's ability to meet its obligations under this Lease, the Trustee or the Agent shall so notify the Lessee and the Lessee shall promptly arrange for such insurance to be carried and maintained. The Lessee will carry such insurance in such amounts, for such risks, with such deductibles and with such insurance companies, satisfactory to the Trustee and the Agent and in any event consistent with prudent industry practice and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units. The proceeds of any such insurance shall be payable to the Agent, the Trustee and the Lessee, as their respective interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not

have been paid in full, and thereafter to the Trustee and, so long as there is no Event of Default hereunder, the Lessee as their respective interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation, expiration or other material change in coverage to the Trustee and the Agent and (ii) waive any right to claim any premiums or commissions against the Trustee, the Owner and the Agent. In the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Trustee, the Owner and the Agent in such policies the insurance shall not require contributions from other policies held by the Trustee, the Owner or the Agent and shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Trustee, the Owner and the Agent, respectively) and shall insure the Trustee, the Owner and the Agent regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Trustee, the Owner or the Agent, respectively). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Trustee certificates issued by the insurer(s) for the insurance maintained pursuant to this § 7; provided, however, that if the delivery of any certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the certificate upon receipt thereof.

(b) In the event that the Lessee shall fail to maintain insurance as herein provided, the Trustee may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand, reimburse the Trustee for the cost thereof together with interest on the amount of such cost at the rate per annum specified in § 19 hereof.

(c) Notwithstanding the above, the Trustee may (but shall not be obligated to) provide casualty insurance at its own expense in amounts which are in excess of the Casualty Value and which policies may name the Trustee as the loss payee. If the Trustee exercises said option, then the Lessee will cooperate with the reasonable requests of the Trustee so as to effect this insurance coverage; it being understood that any insured coverage under this sub-



section (c) is expressly within the Trustee's option and in no way relieves the Lessee from any of its responsibilities under this § 7.6.

7.7. Insurance Proceeds and Condemnation Payments.

If the Trustee shall receive (directly or from the Agent) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Trustee shall pay the same to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance shall remain the property of the Trustee; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value and accrued rentals in respect of such Units to the Trustee. All insurance proceeds received by the Trustee (directly or from the Agent) in respect of any damage to any Unit not constituting a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Trustee that the damage to such Unit in respect of which such proceeds were paid has been fully repaired.

7.8. Economic Obsolescence. If the Lessee shall, in its reasonable judgment, determine that the Units have become economically obsolete in the Lessee's business ("Economic Obsolescence"), the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Trustee, to terminate this Lease as to all Units then subject hereto (subject to the survival of the obligations described in § 4.1 hereof) as of any succeeding rental payment date specified in such notice ("Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 1, 1990, (ii) no Event of Default or other event which after lapse of time or notice or both would become an Event of Default shall have occurred and be continuing and (iii) on such Termination Date such Units shall be in the same condition as if being redelivered pursuant to § 14.1 hereof.

During the period from the date of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of such Units, and the Lessee shall at least five business days prior to the Termination Date certify to the Trustee the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Units) submitting such bid. On the Termination Date the Trustee

sell such Units for cash to the bidder who shall have submitted the highest bid therefor. The total sale price realized at such sale shall be retained by the Trustee.

On the Termination Date, the Lessee shall pay to the Trustee the excess, if any, of the Casualty Value for such Units (computed as of the previous rental payment date) over the sale price of such Units after the deduction of all expenses incurred by the Trustee in connection with such sale ("Termination Value") (in addition to the rental payment due on such Termination Date). In no event shall the sum of such sale proceeds and the Termination Value hereunder paid to the Trustee be less than the amount required to pay in full the outstanding CSA Indebtedness with respect to such Units, including accrued interest thereon.

If no sale shall occur on the date scheduled therefor as provided, this Lease shall continue in full force and effect without change unless and until the Lessee pays the Trustee an amount equal to the Termination Value and returns the Units to the Trustee pursuant to § 17 hereof; provided, however, that the Lessee, on behalf of the Trustee, may attempt to sell the Units at some later date upon 180 days' prior written notice to the Trustee and following the procedure set forth above.

In the event of any such sale and the receipt by the Trustee of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Trustee shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this § 7.8 other than to transfer or to cause to be transferred all of the Trustee's right, title and interest in and to such Units to the purchaser named in the highest bid certified by the Lessee to the Trustee as above provided. Any sale pursuant to this § 7.8 shall be free and clear of all of the Lessee's rights to such Units, but otherwise shall be made without warranties other than against the Trustee's acts.

If the Lessee shall exercise its option to terminate under this § 7.8, the Trustee may, notwithstanding such election by the Lessee, by written notice to the Lessee given

90 days after the termination notice is given to the Trustee, elect to retain the Units then subject to this Lease, in which case the Lessee shall not be obligated to pay the Termination Value to the Trustee; provided, however, that this Lease shall not terminate as to such Units unless the CSA Indebtedness in respect of such Units is prepaid on the Termination Date pursuant to Article 7 of the CSA. In the event the Trustee shall so elect to retain such Units, the Lessee shall assemble and deliver such Units to the Trustee in accordance with the provisions of § 17 hereof.

#### § 8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Trustee, the Owner and the Agent an accurate statement stating (a) as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA and of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Trustee or the Agent may reasonably request and (b) in the case of all Units repainted or repaired during the period covered by such statement, that the numbers and markings required by § 5 hereof have been preserved or replaced. The Trustee and the Agent shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as they may request during the continuance of this Lease.

#### § 9. DISCLAIMER OF WARRANTIES

NEITHER THE TRUSTEE NOR THE OWNER MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER

REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Trustee, the Owner and the Lessee, are to be borne by the Lessee; but the Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Trustee or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Trustee may have against the Builder; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Trustee may (but shall not be obligated to) assert and enforce such claims and rights at the Lessee's sole cost and expense. The Trustee and the Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Trustee, the Owner or the Agent based on any of the foregoing matters.

#### § 10. APPLICABLE LAWS

10.1. Compliance. The Lessee agrees, for the benefit of the Trustee, the Owner and the Agent, to comply in all respects (including without limitation the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the

title, operation or use of the Units (all such laws and rules to such extent called "Applicable Laws"), and in the event that the Applicable Laws require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may upon written notice to the Trustee and the Agent, at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Trustee or the Agent, adversely affect the property or rights of the Trustee or the Agent under this Lease or under the CSA.

10.2. Reports for Trustee and Agent. The Lessee agrees to prepare and deliver to the Trustee and the Agent at its own expense within a reasonable time prior to the required date of filing (or, to the extent permissible, file on their behalf) any and all reports (other than income tax returns) to be filed by the Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Trustee or the Agent of the Units or the leasing thereof to the Lessee.

## § 11. MAINTENANCE AND ACCESSIONS

11.1. Units in Good Operating Order. The Lessee, at its own cost and expense, will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units) which shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with § 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, whether or not installed or added to such Unit in contravention of § 11.2(1) hereof, (ii) the cost of which is

included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit in railroad interchange by the Applicable Laws shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Trustee and the Agent as their respective interests may appear in the Unit.

## § 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay and shall protect, indemnify and hold harmless the Trustee (in both its individual and fiduciary capacities), the Owner, the Agent and their respective successors, assigns, agents and servants ("Indemnified Persons") from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements or expenses relating thereto, including without limitation the attorneys' fees and expenses of any Indemnified Person) in any way relating to or arising or alleged to arise out of this Lease, the CSA or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by the Indemnified Person or the Lessee; (iii) any claim for patent or trademark infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner arising or alleged to arise out of the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Indemnified Person, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation or alleged violation of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the extent any such violation arises

from the gross negligence or wilful misconduct of the Trustee; or (vii) any claim arising out of any of the Trustee's obligations under the Lease Assignment or the Agent's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement (all such matters called "Indemnified Matters"), except to the extent such claim arises from the gross negligence or wilful misconduct of such Indemnified Person. The Lessee shall be obligated under this § 12.1, whether or not any Indemnified Person shall also be indemnified with respect to any Indemnified Matter under any other agreement by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense defend such action, suit or proceeding, or cause the same to be defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any indemnification under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Trustee each agrees to give the other promptly upon obtaining knowledge thereof written notice of any claim hereby indemnified against. Upon the payment in full by the Lessee of any indemnities as contained in this § 12; and provided that no Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of such Indemnified Matter. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for its indemnification payments previously made.

### 12.2. Indemnification of Third-Party Beneficiaries.

The Lessee further agrees to indemnify, protect and hold harmless the Trustee, the Investors, the Agent, the Owner and the Builder as third-party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against any such party because of the use in or about the construction or operation of any unit of Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder under the CSA.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

12.4. No Guarantee by Lessee. Nothing in this § 12 shall constitute a guarantee by the Lessee of the CSA Indebtedness (as defined in the CSA) or a guarantee of the residual value of any Unit.

## § 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event an "Event of Default") shall occur:

(A) (1) default shall be made in payment of any amount provided for in § 3 hereof, and such default shall continue for 5 days; or (2) default shall be made in payment of any amount provided in § 7 or 17 hereof, and such default shall continue for 5 days;



(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or any interest herein or of the right to possession of any Units;

(C) default shall be made in the observance or performance of any other covenant, condition or agreement on the part of the Lessee contained herein, in the Participation Agreement or the Consent (as defined in the Participation Agreement) and such default shall continue for 20 days after written notice from the Trustee or the Agent to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein, in the Participation Agreement or in any certificate or statement furnished to the Trustee pursuant to or in connection with any such agreement proves untrue in any material respect as of the date of making thereof;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or

(F) any other proceeding shall be commenced by or against the Lessee for any relief which includes or might result in any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and, unless

such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers;

then, in any such case, the Trustee, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof (including without limitation after-tax losses of income tax benefits); or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Trustee, subject to the applicable provisions of law, may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and possess the same free from any right of the Lessee or its successors or assigns to use the Units for any purposes whatever, without penalty; but the Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as liquidated damages for

loss of a bargain and not as a penalty whichever of the following amounts that the Trustee in its sole discretion shall specify, (i) the sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Trustee reasonably estimates to be obtainable for each Unit during such period (such present value to be computed in each case on the basis of a 6% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, which the Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Trustee reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Trustee shall have sold any Unit, the Lessee shall, if the Trustee shall so elect, pay to the Trustee on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Trustee's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Trustee shall not be deemed exclusive, but shall be cumulative and may be

exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

13.3. Failure To Exercise Rights Is Not Waiver.

The failure or delay of the Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default.

The Lessee agrees to furnish written notice to the Trustee and the Agent, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which after notice or lapse of time or both would constitute such an Event of Default, specifying such condition and the nature and status thereof. A "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee contained in this Lease, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

**§ 14. RETURN OF UNITS UPON DEFAULT**

14.1. Return of Units.

If this Lease shall terminate pursuant to § 13 hereof or Article 16 of the CSA, the Lessee shall forthwith deliver possession of the Units to the Trustee. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, shall comply with all Applicable Laws then in effect and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11 hereof, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as

above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks as the Trustee reasonably may designate;

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Trustee; and

(c) cause the same to be transported to any reasonable interchange point as directed by the Trustee.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction the Trustee shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Units in good order and repair and will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Trustee and, if received by the Lessee, shall be promptly turned over to the Trustee. In the event any Unit is not assembled, delivered and stored as hereinabove provided within 30 days after such termination, the Lessee shall in addition pay to the Trustee for each day thereafter an amount equal to the amount, if any, by which the percentage of the Purchase Price of such Unit for each such day (obtained by dividing the basic lease rate as set forth in § 3.1 hereof for each monthly payment for such Unit by 30) exceeds the actual earnings received by the Trustee on such Unit for each such day. Such payment shall not offset the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this section.

14.2. Trustee Appointed Agent of Lessee. Without limiting the obligations of the Lessee under the foregoing sections, the Lessee hereby irrevocably appoints the Trustee

as its agent and attorney, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit.

§ 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Trustee without the consent of the Lessee. The Lessee hereby acknowledges the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units. (1) So long as no Event of Default exists hereunder and subject to § 4.2 hereof, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Trustee and the Agent, except as provided in paragraph (2) of this § 15.2; and the Lessee shall not part with the possession or control of or allow to pass out of its possession or control any of the Units without the prior written consent of the Trustee and the Agent, except as provided in said paragraph (2). The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which if unpaid might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Trustee or the Agent or resulting from claims against the Trustee or the Agent not related to the ownership of the Units upon or with respect to any Unit, including any accession thereto, or the interest of the Trustee, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; provided, however, that the Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Agent and the Trustee, materially adversely affect the interest of the Agent or the Trustee in the Equipment, the Agent's interest in the income and proceeds from the Equipment or otherwise under this Lease or the CSA.

(2) So long as no Event of Default exists hereunder and subject to § 4.2 hereof, the Lessee shall be

entitled to the possession and use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which any of their railroad equipment is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or use or permit the assignment, sublease or use of any Unit predominantly outside the United States. Any sublease permitted by this paragraph shall be expressly subordinate to the rights and remedies of the Agent under the CSA and the Trustee under this Lease in respect of the Units covered by such sublease.

### 15.3. Merger, Acquisition or Consolidation.

Nothing in this § 15 shall be deemed to restrict the right of the Lessee to assign its leasehold interest under this Lease or possession of the Units to any corporation incorporated under the laws of any state of the United States or the District of Columbia into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety and which shall have duly assumed the obligations of the Lessee hereunder; provided that such assignee will not, upon the effectiveness thereof, be in default under any provision of this Lease.

## § 16. RENEWAL OPTIONS

16.1. Renewal for Successive Period. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Trustee not less than 90 days nor more than 270 days prior to the end of the original term of this Lease elect to extend such original term of this Lease in respect of all but not less than all the Units then covered by this Lease for a period of 5 years or such other time acceptable to both the Lessee and Trustee commencing on the scheduled expiration of such original term of this Lease, at a "Fair Market Rental" payable monthly in advance on the first day of each month in each year of such extended term. In the event of any such renewal, the Casualty Value payable

in respect of a Casualty Occurrence involving any Unit shall be as agreed upon by the Trustee and the Lessee.

16.2. Determination of Fair Market Rental.

(1) The Fair Market Rental for each extended term of this Lease shall be equal to the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, either party to such determination may give written notice to the other requesting determination of such value by an appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply to make such appointment to the American Arbitration Association and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If 3 appraisers shall be appointed, the determination of the appraiser which differs most from the other 2 appraisers shall be excluded, the remaining 2 determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any



judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

§ 17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, deliver possession of such Unit to the Trustee upon such storage tracks as the Trustee may reasonably designate or, in the absence of such designation, as the Lessee may select, and permit the Trustee to store such Unit on such tracks for a period not exceeding 6 months and transport the same, at any time within such 6-month period, to any reasonable place or to any connecting carrier for shipment, all as directed by the Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee. Upon delivery pursuant to the preceding sentence, the Lessee shall be absolved of any further responsibility for such Units. During any such storage period the Lessee will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this sentence. Each Unit returned to the Trustee pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet all standards of the Applicable Laws then in effect and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction, the Trustee shall be entitled to a decree against the Lessee requiring specific performance thereof. The Lessee shall be required to pay to the Trustee rent for each day any Unit is not so returned in an amount equal to 0.0285% of the Purchase Price of such Unit for each day from the expiration of the Lease to the date such Unit is returned.

In the event any Unit is not assembled, delivered, stored and transported, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Trustee for each day thereafter an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds the actual earnings received by the Trustee on such Unit for each such day, unless the Trustee shall have received such per diem.

#### § 18. FILING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance of any Unit hereunder, and will undertake the filing required of the Trustee under the CSA; provided, however, that the Lessee shall be entitled to rely on advice from special counsel for the Agent that such filing has occurred. The Lessee will from time to time perform any other act and will execute, acknowledge, deliver and file (and will refile whenever required) any and all further instruments required by law or reasonably requested by the Trustee or the Agent for the purpose of proper protection, to their satisfaction, of their respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Agent and the Trustee evidence of all such filing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Trustee.

#### § 19. INTEREST ON OVERDUE RENTALS

The Lessee shall promptly pay, to the extent legally enforceable, an amount equal to the interest at 12-3/8% per annum on any overdue rentals and other obligations due hereunder for the period of time during which they are overdue.

#### § 20. INCOME TAXES

§ 20.1. Tax Assumptions. This Lease and the CSA have been entered into on the assumptions that (A) the Owner,

as the beneficial owner of the Units, will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof ("Code"), to an owner of property, including without limitation (1) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code ("ADR Deduction") (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 77-10, for property in Asset Guideline Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining-balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum-of-the-years-digits method of depreciation when most beneficial to the Trustee, (c) including in the basis of the Units the entire Purchase Price thereof and all other items properly includible under section 1012 of the Code ("Basis") and (d) taking into account a salvage value, after the reduction allowed by section 167(f) of the Code, of zero, (2) deductions with respect to interest payable under the CSA pursuant to section 163 of the Code ("Interest Deduction") and (3) the 10% investment credit with respect to 100% of the Basis of the Units ("Investment Credit") pursuant to section 38 and related sections of the Code and (B) all amounts includible in gross income by the Trustee or the Owner with respect to this Lease will be treated as income from sources within the United States.

#### 20.2. Lessee's Representations and Agreements.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Trustee or the Owner, and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. The Lessee agrees to keep and make available for inspection and copying by the Trustee, and will on written request by the Trustee provide the Trustee with such records as will enable the Owner to determine whether it is entitled (A) to the full benefit of the ADR Deduction, the Interest Deduction and the Investment Credit with respect to the Units and (B) to treat amounts includible

in gross income with respect to this Lease as income from sources within the United States.

The Lessee represents and warrants that (i) all the Units constitute property the entire Basis of which qualifies for the 10% Investment Credit under section 50 of the Code; (ii) at the time the Trustee becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code, and at the time the Trustee becomes the owner of the Units, the units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Trustee; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; (iv) none of the units will be "used predominantly outside the United States" within the meaning of section 48(a)(2) of the Code; and (v) all items includible in gross income by the Trustee or the Owner with respect to this lease are entitled to treatment as income from sources within the United States.

20.3. Indemnification. If, for any reason whatsoever (other than for the reasons set forth below), all or any part of the ADR Deduction, the Interest Deduction or the Investment Credit with respect to any Unit shall be unavailable in computing each of the items of income, gain, loss, deduction or credit of the Owner or the Trustee, or the Owner shall determine that all amounts includible in gross income with respect to this Lease cannot be treated as income from sources within the United States for any taxable year (or portion thereof) during which this Lease is in effect as the result of the location of any Unit outside the United States, the rental applicable to such Unit set forth in § 3 shall, on the next succeeding rental payment date after written notice to the Lessee by the Trustee of such fact, be increased by such amount as shall be required, in the reasonable opinion of the Owner, to cause the Owner's net after-tax annual cash flow and net after-tax rate of return to be at least the same as such net after-tax annual cash flow and net after-tax rate of return would have been had the ADR Deduction, the Interest Deduction and the Investment Credit been wholly available and had the Trustee and the Owner been entitled to treat all amounts includible in gross income with respect to this Lease as income from sources within the United States; provided, however, that such rental shall not be so increased to the extent that the

ADR Deduction, the Interest Deduction or the Investment Credit with respect to such Unit is unavailable as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit if the Lessee shall have paid to the Trustee the amounts stipulated pursuant to § 7 hereof;

(ii) a voluntary transfer by the Trustee of legal title to such Unit, a voluntary disposition by the Trustee of any interest in such Unit or a voluntary reduction by the Trustee of its interest in the rentals from such Unit under this Lease (except pursuant to an assignment of this Lease to the Agent) unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Owner to claim the ADR Deduction, the Interest Deduction or the Investment Credit on its income tax return for the appropriate year, unless the Owner shall have received an opinion of independent tax counsel to the effect that the Owner is not entitled to claim the ADR Deduction, the Interest Deduction or the Investment Credit; or

(iv) the failure of the Owner to have sufficient liability for Federal income tax against which to credit the Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction.

20.4. Adjustment of Rentals. If, for any reason whatsoever, all or any part of the cost of any improvement and/or addition to a Unit or any expenditure by the Lessee in respect of any Unit or this Lease ("Additional Expenditures") made by the Lessee under and pursuant to the terms of this Lease or otherwise is required to be included in the gross income of the Trustee or the Owner for Federal income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the rentals of the Unit set forth in § 3 hereof shall, on the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice to the Trustee pursuant to the following sentence that such inclusion in the Trustee's or the Owner's gross income is required, be increased to such amount or amounts as shall, in the reasonable opinion of the Owner (after taking into account any present or future tax benefits that the Owner reasonably anticipates it will

derive from its additional investment in the Units by reason of such inclusion, including without limitation any current deductions, future depreciation deductions and investment tax credit), cause the Owner's net after-tax annual cash flow and net after-tax rate of return (calculated on the same basis as used by the Owner in originally evaluating this transaction) to equal the net after-tax annual cash flow and net after-tax rate of return that would have been realized by the Owner if the cost of such Additional Expenditures had not been includible in the Owner's gross income. The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Trustee or the Owner gives the Lessee written notice that the Trustee's or the Owner's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Additional Expenditures which are required to be included in the gross income of the Trustee or the Owner for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Trustee and the Owner describing such Additional Expenditures in reasonable detail.

20.5. Adjustment of Casualty Values. In the event the rental rates shall be adjusted as hereinbefore provided, the Casualty Values set forth in § 7 hereof shall be adjusted accordingly.

20.6. IRS Ruling. The Trustee and the Owner are entitled, but are not required, to request a ruling from the Internal Revenue Service ("Ruling") to the effect, among other things, that this Lease is a true lease, that the Trustee is the owner of the Units and that the Owner has the right to claim the ADR Deduction, the Interest Deduction and the Investment Credit. The Lessee will furnish such documents, records and representations, including but not limited to evidence of the useful life and residual value of the Units sufficient to support the matters claimed in any request for the Ruling, as shall be deemed necessary and appropriate for such request by the Trustee. The Lessee shall join in such request. If the Ruling received by the Trustee and the Owner requires the cost of any Additional Expenditures made by the Lessee to be included in the gross income of the Trustee or the Owner, the Trustee shall, upon request and at the expense of the Lessee, seek a modification of the aforementioned requirement.

20.7. Survival. The Lessee's and the Trustee's agreements to pay any sums which may become payable pursuant to this § 20 shall survive the expiration or other termination of this Lease.

#### § 21. NOTICES

Any document or notice required or permitted to be given to either party hereto shall be deemed to have been given when delivered or mailed, first class, postage prepaid, addressed as follows:

(a) if to the Trustee, at P. O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department;

(b) if to the Lessee, at Checkerboard Square, St. Louis, Missouri 63188, attention of Robert W. Lockwood;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Agent at 510 Locust Street, St. Louis, Missouri 63101, attention of Corporate Trust Department.

#### § 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### § 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Trustee and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall

be valid unless in writing and signed by duly authorized officers for the Trustee and the Lessee.

#### § 24. THIRD-PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto other than the Owner, the Agent, the Investors, the Builder and the permitted successors and assigns of such parties, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party, except as aforesaid.

#### § 25. EXECUTION

This Lease may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent pursuant to the Lease Assignment shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

#### § 26. GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the State of Missouri; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

#### § 27. NO RECOURSE; IMMUNITIES

27.1. No Recourse. No recourse shall be had in respect of any obligation due under this Lease or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owner, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever



released as a condition of and as consideration for the execution of this Lease.

27.2. Immunities. Each representation, warranty and agreement herein made on the part of the financial institution acting as Trustee hereunder is made and intended not as a personal representation, warranty or agreement by said institution or for the purpose or with the intention of binding said institution personally but is made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution or the Owner on account of any representation, warranty or agreement herein of the Trustee (except in the case of gross negligence or wilful misconduct), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under the Lessee making claim hereunder may look to said Trust Estate for satisfaction of the same.

#### § 28. AGREEMENTS FOR BENEFIT OF TRUSTEE'S ASSIGNS

All rights of the Trustee hereunder (including but not limited to its rights under §§ 6, 7, 9, 12, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Trustee and any of the Trustee's assigns (including the Agent).

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.


MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity but solely as Trustee,

by

  
Assistant Vice President

[Corporate Seal]

Attest:

  
Corporate Trust Officer

RALSTON PURINA COMPANY,

by \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE, )

On this 17<sup>th</sup> day of December 1979, before me personally appeared R. E. Schreiber, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Patricia A. Shilow  
Notary Public

[Notarial Seal]

My Commission expires 7-1-82

STATE OF MISSOURI, )  
 ) ss.:  
COUNTY OF . )

On this                    day of December 1979, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is                    of RALSTON PURINA COMPANY, a Missouri corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

APPENDIX A TO LEASE

Units of Railroad Equipment

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plants</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Delivery</u>
100-ton 4750 cubic foot truck gravity discharge covered hopper cars	LO	as set forth in Purchase Order	Oklahoma City, Oklahoma; Longview, Texas	50	PLMX 11186- PLMX 11235	\$44,695	\$2,234,750	December 1979, F.O.B. point of manu- facture

## APPENDIX B TO LEASE

Casualty Values

<u>Casualty</u> <u>Payment Dates</u>	<u>Percentage</u> <u>of</u> <u>Purchase Price</u>	<u>Casualty</u> <u>Payment Dates</u>	<u>Percentage</u> <u>of</u> <u>Purchase Price</u>
1	108.7850	41	102.1268
2	108.9254	42	101.9927
3	109.0671	43	101.8431
4	109.2102	44	101.6922
5	109.3283	45	101.5399
6	109.4475	46	101.3720
7	109.5416	47	101.2026
8	109.6366	48	101.0316
9	109.7325	49	100.8448
10	109.8031	50	100.6564
11	109.8743	51	100.4662
12	109.9463	52	100.2744
13	109.9926	53	100.0701
14	110.0395	54	99.8641
15	110.0868	55	99.6455
16	110.1346	56	99.4250
17	110.1615	57	99.2025
18	110.1887	58	98.9673
19	110.1949	59	98.7301
20	110.2012	60	98.4906
21	110.2076	61	91.5784
22	110.1927	62	91.3239
23	110.1778	63	91.0671
24	110.1627	64	90.8079
25	110.1263	65	90.5396
26	110.0895	66	90.2688
27	110.0524	67	89.9887
28	110.0151	68	89.7060
29	109.9596	69	89.4205
30	109.9036	70	89.1254
31	109.8292	71	88.8275
32	109.7543	72	88.5268
33	109.6787	73	88.2163
34	109.5845	74	87.9028
35	109.4895	75	87.5863
36	109.3938	76	87.2668
37	102.6093	77	86.9413
38	102.4937	78	86.6126
39	102.3772	79	86.2778
40	102.2597	80	85.9392

## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
81	85.5968	121	61.5709
82	85.2475	122	61.0547
83	84.8943	123	60.5319
84	84.5371	124	60.0023
85	77.5030	125	59.4780
86	77.1348	126	58.9463
87	76.7625	127	58.4193
88	76.3860	128	57.8850
89	76.0062	129	57.3432
90	75.6221	130	56.8060
91	75.2341	131	56.2614
92	74.8411	132	55.7093
93	74.4433	133	55.1616
94	74.0413	134	54.6063
95	73.6343	135	54.0435
96	73.2222	136	53.4731
97	72.8059	137	52.9106
98	72.3845	138	52.3400
99	71.9578	139	51.7770
100	71.5260	140	51.2060
101	71.0933	141	50.6269
102	70.6554	142	50.0553
103	70.2168	143	49.4756
104	69.7721	144	48.8877
105	69.3215	145	48.3072
106	68.8695	146	47.7185
107	68.4114	147	47.1215
108	67.9472	148	46.5162
109	67.4814	149	45.9205
110	67.0094	150	45.3165
111	66.5311	151	44.7221
112	66.0466	152	44.1194
113	65.5640	153	43.5083
114	65.0750	154	42.9066
115	64.5879	155	42.2963
116	64.0944	156	41.6773
117	63.5945	157	41.0677
118	63.0963	158	40.4495
119	62.5916	159	39.8225
120	62.0804	160	39.1867

## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
161	38.5612
162	37.9270
163	37.3030
164	36.6703
165	36.0287
166	35.3974
167	34.7572
168	34.1081
169	33.4691
170	32.8211
171	32.1638
172	31.4973
173	30.8418
174	30.1771
175	29.5235
176	28.8606
177	28.1883
178	27.5271
179	26.8566
180	26.1766

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[CS&M Ref. 5566-001]

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1979

between

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
International Paper Leasing Corporation,

and

RALSTON PURINA COMPANY,  
Lessee.

[Covering 50 4,750 cubic foot Covered Hopper Cars]

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# LEASE OF RAILROAD EQUIPMENT

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\* This Table of Contents has been included for convenience only and does not form a part of this document.

LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1979, between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, acting not in its individual capacity but solely as trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with INTERNATIONAL PAPER LEASING CORPORATION, a Delaware corporation ("Owner"), and RALSTON PURINA COMPANY, a Missouri corporation ("Lessee").

The Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with TRINITY INDUSTRIES, INC. ("Builder"), pursuant to which the Builder has agreed to manufacture, conditionally sell and deliver to the Trustee the units of railroad equipment described in Appendix A hereto ("Equipment").

The Builder is assigning certain of its interests in the CSA pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") to ST. LOUIS UNION TRUST COMPANY, acting as agent ("Agent") for THE FRANKLIN LIFE INSURANCE COMPANY ("Original Investor" and, together with its successors and assigns, "Investors") under a Participation Agreement dated as of the date hereof ("Participation Agreement") between the Lessee, the Agent, the Owner, the Trustee and the Original Investor.

The Lessee will lease from the Trustee such units of Equipment as are delivered and accepted and settled for under the CSA ("Units") upon the terms and conditions hereinafter provided. The Trustee will assign certain of its rights under this Lease for security to the Agent pursuant to an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

In consideration of the agreements hereinafter set forth, the Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

#### § 1. NET LEASE

This Lease is a net lease. Each of the Lessee's obligations to pay all rentals and other amounts hereunder

shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, including but not limited to abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Trustee or the Owner under this Lease or the CSA or otherwise including the Lessee's rights by subrogation thereunder against the Builder, the Agent or otherwise (and including any claims of the Lessee against Railcar Service, Inc., pursuant to the service contract covering the Units); nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Trustee or the Lessee be otherwise affected by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Builder, the Trustee, the Owner or the Agent for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Trustee under the CSA

shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States at which such Unit is so delivered to the Trustee. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Trustee under the CSA and on behalf of itself hereunder and to execute and deliver to the Trustee a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease; provided, however, that the delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 3.3 thereof or Section 4 of the CSA Assignment shall be ineffective to subject such unit to this Lease. The Lessee hereby represents and warrants to the Trustee that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee or its agent as agent for the Trustee hereunder.

### § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Trustee, as rental for each Unit subject to this Lease, (a) one interim rental payment on the Closing Date (as defined in Section 4.2 of the CSA) and (b) thereafter 180 consecutive monthly payments, in advance, commencing on January 1, 1980, and payable on the first day of each of the 179 months thereafter. The interim rental payment for each Unit subject to this Lease shall be in an amount equal to 0.0285% of the Purchase Price (as defined in Section 4.1 of the CSA) of such Unit for each day elapsed from and including the date of acceptance thereof to but not including January 1, 1980. The 180 monthly rental payments for each Unit subject to this Lease shall each be in an amount equal to 0.8831% of the Purchase Price of such Unit. \*

3.2. Payment on Nonbusiness Day. If any of the rental payment dates referred to in § 3.1 is not a business day, the rental payment otherwise payable on such date shall be payable on the succeeding business day. The term

"business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, St. Louis, Missouri, or New York, New York, are authorized or obligated to remain closed.

3.3. Instructions To Pay Agent and Trustee. Upon execution and delivery of the Lease Assignment and until the Agent shall have advised the Lessee in writing that all sums due from the Trustee under the CSA have been fully satisfied and discharged, the Trustee irrevocably instructs the Lessee and the Lessee agrees to make all the payments provided for in this Lease to the Agent (other than payments not assigned to the Agent under the Lease Assignment), for the account of the Trustee, in care of the Agent, with instructions to the Agent (a) first to apply such payments to satisfy the obligations of the Trustee under the CSA known to the Agent to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Trustee or to the order of the Trustee in immediately available funds at such place as the Trustee shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Agent in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied, the installments of rental due hereunder and any Casualty Payments thereafter due pursuant to § 7 hereof shall be made to the Trustee in immediately available funds in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 hereof in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance thereof pursuant to § 2 hereof and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on December 31, 1994. The obligations of the Lessee hereunder (including but not limited to the obligations under §§ 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. All rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Agent is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession and use provided under § 15 hereof.

#### § 5. IDENTIFICATION MARKS

The Lessee will, at its own expense, cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto or, in the case of any Unit not there listed, such identification number as shall be set forth in any supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Trustee's title to and the Agent's security interest in such Unit. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on each side thereof and will replace promptly any such words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Agent and the Trustee and filed by the Lessee in all public offices where this Lease and the CSA shall have been filed and (ii) the Lessee shall have furnished the Agent and the Trustee an opinion of counsel to the effect that such statement has been so filed, such filing will protect the Agent's and the Trustee's interests in such Units and no filing with or giving of notice to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Agent and the Trustee in such Units.

The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

#### § 6. GENERAL TAX INDEMNIFICATION

The Lessee assumes responsibility for and agrees to pay and agrees to protect, save, keep harmless and indemnify the Trustee, the Owner and the Agent and their successors and assigns ("Indemnified Persons") against all taxes, assessments, fees, withholdings and other governmental charges of any nature whatsoever, including without limitation penalties and interest (all such taxes, assessments, fees, withholdings, governmental charges, penalties and interest called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of or with respect to this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for any Federal, state and local taxes measured by net income based upon the Trustee's receipt of payments provided for herein (other than payments due the Trustee under this § 6 for which the Trustee is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within 10 days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that the Lessee shall not be required to pay any Taxes so long as it is contesting such taxes in good faith and by appropriate legal or administrative proceedings and the nonpayment thereof does not, in the

reasonable opinion of the Trustee or the Agent, adversely affect the title, property or rights of the Trustee hereunder or the Agent under the CSA. The Lessee agrees to give the Trustee and the Agent notice of such contest within 30 days after institution thereof and the Trustee agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any Tax shall have been charged or levied against the Trustee directly and paid by the Trustee, the Lessee shall reimburse the Trustee on presentation of an invoice therefor.

In the event that the Trustee shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall upon demand pay such additional amounts (which shall also be deemed Taxes hereunder) to the Trustee as will enable the Trustee to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Trustee and the Agent in such Units; provided, however, that to the extent permitted by law, the Lessee shall file such returns, statements and reports relating to sales or use taxes and taxes, fees and charges on or measured by the Trustee's earnings or gross receipts arising from the Units or the value added by the Trustee thereto with respect to any state of the United States or political subdivision thereof as the Lessee shall determine are required to be filed and as shall be prepared by the Lessee, and shall promptly pay such taxes, fees and charges when due. To the extent that the Trustee has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee, and, if necessary, the Trustee will request from the appropriate taxing authorities the information that the Lessee deems necessary in filing such tax reports or in appealing any tax assessments.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Trustee hereby authorizes the Lessee to act in the name of the Trustee and on its behalf; provided, however,



that the Lessee shall indemnify and hold the Trustee harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of or incident to any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Trustee, submit to the Trustee copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Trustee of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Trustee reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

The Lessee covenants and agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

All of the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding the expiration of this Lease.

#### § 7. CASUALTY OCCURRENCES; INSURANCE; ECONOMIC OBSOLESCENCE

7.1. Definition of Casualty Occurrence; Payments.  
In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or for an indefinite period, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days prior to the return of such Unit in the manner set forth in § 14 or 17 hereof (each such occurrence called a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Trustee and the Agent with respect thereto. On the next succeeding rental payment date (each such date called a "Casualty Payment Date"), the Lessee shall

pay to the Trustee a sum equal to the Casualty Value (as defined in § 7.5 hereof) of any such Unit as of such Casualty Payment Date, plus the rental in respect of such Unit accrued as of such Casualty Payment Date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Trustee shall be entitled to recover possession of such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 17 hereof, the Lessee shall promptly and fully notify the Trustee with respect thereto and pay to the Trustee (in addition to any amounts due pursuant to § 17 hereof) an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Trustee shall be entitled to recover possession of such Unit.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred and in the event of termination of this Lease, the Lessee will comply with all provisions of § 14 or 17 hereof, as the case may be, except that the Lessee will not be obligated to return such Unit until return thereof to the Lessee. All payments received by the Trustee or the Lessee from the United States Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to or retained by the Lessee; provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing. All payments received by the Trustee or the Lessee after the term of this Lease or any renewal thereof shall be paid over to or retained by the Trustee.

7.3. Lessee Agent for Disposal. The Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease at the best price obtainable on an "as is, where is" basis. Provided that the

Lessee has previously paid the Casualty Value to the Trustee, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit and shall pay any excess to the Trustee.

7.4. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite the numbered Casualty Payment Date next succeeding the actual date of such Casualty Occurrence or, if there is no such numbered Casualty Payment Date, the last rental payment date; but in no event shall such amount be less than the "Casualty Value" (as defined in Section 7.3 of the CSA) as of such Casualty Payment Date.

7.5. No Release. Except as provided in this § 7, the Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence, and shall bear the risk of any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.6. Insurance To Be Maintained. (a) The Lessee will at all times prior to the return of the Equipment to the Trustee, at its own expense, cause to be carried and maintained public liability insurance providing coverage of not less than \$10,000,000 with respect to third-party personal injury and property damage and may, at its option, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto; provided, however, that if, in the reasonable opinion of the Trustee or the Agent, the Lessee's financial condition has materially changed from its condition as of the date hereof such that property insurance is required to assure the Lessee's ability to meet its obligations under this Lease, the Trustee or the Agent shall so notify the Lessee and the Lessee shall promptly arrange for such insurance to be carried and maintained. The Lessee will carry such insurance in such amounts, for such risks, with such deductibles and with such insurance companies, satisfactory to the Trustee and the Agent and in any event consistent with prudent industry practice and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units. The proceeds of any such insurance shall be payable to the Agent, the Trustee and the Lessee, as their respective interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not

have been paid in full, and thereafter to the Trustee and, so long as there is no Event of Default hereunder, the Lessee as their respective interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation, expiration or other material change in coverage to the Trustee and the Agent and (ii) waive any right to claim any premiums or commissions against the Trustee, the Owner and the Agent. In the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Trustee, the Owner and the Agent in such policies the insurance shall not require contributions from other policies held by the Trustee, the Owner or the Agent and shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Trustee, the Owner and the Agent, respectively) and shall insure the Trustee, the Owner and the Agent regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Trustee, the Owner or the Agent, respectively). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Trustee certificates issued by the insurer(s) for the insurance maintained pursuant to this § 7; provided, however, that if the delivery of any certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the certificate upon receipt thereof.

(b) In the event that the Lessee shall fail to maintain insurance as herein provided, the Trustee may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand, reimburse the Trustee for the cost thereof together with interest on the amount of such cost at the rate per annum specified in § 19 hereof.

(c) Notwithstanding the above, the Trustee may (but shall not be obligated to) provide casualty insurance at its own expense in amounts which are in excess of the Casualty Value and which policies may name the Trustee as the loss payee. If the Trustee exercises said option, then the Lessee will cooperate with the reasonable requests of the Trustee so as to effect this insurance coverage; it being understood that any insured coverage under this sub-

section (c) is expressly within the Trustee's option and in no way relieves the Lessee from any of its responsibilities under this § 7.6.

7.7. Insurance Proceeds and Condemnation Payments.

If the Trustee shall receive (directly or from the Agent) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Trustee shall pay the same to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance shall remain the property of the Trustee; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value and accrued rentals in respect of such Units to the Trustee. All insurance proceeds received by the Trustee (directly or from the Agent) in respect of any damage to any Unit not constituting a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Trustee that the damage to such Unit in respect of which such proceeds were paid has been fully repaired.

7.8. Economic Obsolescence. If the Lessee shall, in its reasonable judgment, determine that the Units have become economically obsolete in the Lessee's business ("Economic Obsolescence"), the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Trustee, to terminate this Lease as to all Units then subject hereto (subject to the survival of the obligations described in § 4.1 hereof) as of any succeeding rental payment date specified in such notice ("Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 1, 1990, (ii) no Event of Default or other event which after lapse of time or notice or both would become an Event of Default shall have occurred and be continuing and (iii) on such Termination Date such Units shall be in the same condition as if being redelivered pursuant to § 14.1 hereof.

During the period from the date of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of such Units, and the Lessee shall at least five business days prior to the Termination Date certify to the Trustee the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Units) submitting such bid. On the Termination Date the Trustee

sell such Units for cash to the bidder who shall have submitted the highest bid therefor. The total sale price realized at such sale shall be retained by the Trustee.

On the Termination Date, the Lessee shall pay to the Trustee the excess, if any, of the Casualty Value for such Units (computed as of the previous rental payment date) over the sale price of such Units after the deduction of all expenses incurred by the Trustee in connection with such sale ("Termination Value") (in addition to the rental payment due on such Termination Date). In no event shall the sum of such sale proceeds and the Termination Value hereunder paid to the Trustee be less than the amount required to pay in full the outstanding CSA Indebtedness with respect to such Units, including accrued interest thereon.

If no sale shall occur on the date scheduled therefor as provided, this Lease shall continue in full force and effect without change unless and until the Lessee pays the Trustee an amount equal to the Termination Value and returns the Units to the Trustee pursuant to § 17 hereof; provided, however, that the Lessee, on behalf of the Trustee, may attempt to sell the Units at some later date upon 180 days' prior written notice to the Trustee and following the procedure set forth above.

In the event of any such sale and the receipt by the Trustee of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Trustee shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this § 7.8 other than to transfer or to cause to be transferred all of the Trustee's right, title and interest in and to such Units to the purchaser named in the highest bid certified by the Lessee to the Trustee as above provided. Any sale pursuant to this § 7.8 shall be free and clear of all of the Lessee's rights to such Units, but otherwise shall be made without warranties other than against the Trustee's acts.

If the Lessee shall exercise its option to terminate under this § 7.8, the Trustee may, notwithstanding such election by the Lessee, by written notice to the Lessee given

90 days after the termination notice is given to the Trustee, elect to retain the Units then subject to this Lease, in which case the Lessee shall not be obligated to pay the Termination Value to the Trustee; provided, however, that this Lease shall not terminate as to such Units unless the CSA Indebtedness in respect of such Units is prepaid on the Termination Date pursuant to Article 7 of the CSA. In the event the Trustee shall so elect to retain such Units, the Lessee shall assemble and deliver such Units to the Trustee in accordance with the provisions of § 17 hereof.

#### § 8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Trustee, the Owner and the Agent an accurate statement stating (a) as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA and of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Trustee or the Agent may reasonably request and (b) in the case of all Units repainted or repaired during the period covered by such statement, that the numbers and markings required by § 5 hereof have been preserved or replaced. The Trustee and the Agent shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as they may request during the continuance of this Lease.

#### § 9. DISCLAIMER OF WARRANTIES

NEITHER THE TRUSTEE NOR THE OWNER MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER

REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Trustee, the Owner and the Lessee, are to be borne by the Lessee; but the Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Trustee or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Trustee may have against the Builder; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Trustee may (but shall not be obligated to) assert and enforce such claims and rights at the Lessee's sole cost and expense. The Trustee and the Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Trustee, the Owner or the Agent based on any of the foregoing matters.

#### § 10. APPLICABLE LAWS

10.1. Compliance. The Lessee agrees, for the benefit of the Trustee, the Owner and the Agent, to comply in all respects (including without limitation the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the



title, operation or use of the Units (all such laws and rules to such extent called "Applicable Laws"), and in the event that the Applicable Laws require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may upon written notice to the Trustee and the Agent, at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Trustee or the Agent, adversely affect the property or rights of the Trustee or the Agent under this Lease or under the CSA.

10.2. Reports for Trustee and Agent. The Lessee agrees to prepare and deliver to the Trustee and the Agent at its own expense within a reasonable time prior to the required date of filing (or, to the extent permissible, file on their behalf) any and all reports (other than income tax returns) to be filed by the Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Trustee or the Agent of the Units or the leasing thereof to the Lessee.

## § 11. MAINTENANCE AND ACCESSIONS

11.1. Units in Good Operating Order. The Lessee, at its own cost and expense, will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units) which shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with § 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, whether or not installed or added to such Unit in contravention of § 11.2(1) hereof, (ii) the cost of which is

included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit in railroad interchange by the Applicable Laws shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Trustee and the Agent as their respective interests may appear in the Unit.

## § 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay and shall protect, indemnify and hold harmless the Trustee (in both its individual and fiduciary capacities), the Owner, the Agent and their respective successors, assigns, agents and servants ("Indemnified Persons") from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements or expenses relating thereto, including without limitation the attorneys' fees and expenses of any Indemnified Person) in any way relating to or arising or alleged to arise out of this Lease, the CSA or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by the Indemnified Person or the Lessee; (iii) any claim for patent or trademark infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner arising or alleged to arise out of the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Indemnified Person, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation or alleged violation of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the extent any such violation arises

from the gross negligence or wilful misconduct of the Trustee; or (vii) any claim arising out of any of the Trustee's obligations under the Lease Assignment or the Agent's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement (all such matters called "Indemnified Matters"), except to the extent such claim arises from the gross negligence or wilful misconduct of such Indemnified Person. The Lessee shall be obligated under this § 12.1, whether or not any Indemnified Person shall also be indemnified with respect to any Indemnified Matter under any other agreement by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense defend such action, suit or proceeding, or cause the same to be defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any indemnification under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Trustee each agrees to give the other promptly upon obtaining knowledge thereof written notice of any claim hereby indemnified against. Upon the payment in full by the Lessee of any indemnities as contained in this § 12; and provided that no Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of such Indemnified Matter. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for its indemnification payments previously made.

### 12.2. Indemnification of Third-Party Beneficiaries.

The Lessee further agrees to indemnify, protect and hold harmless the Trustee, the Investors, the Agent, the Owner and the Builder as third-party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against any such party because of the use in or about the construction or operation of any unit of Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder under the CSA.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

12.4. No Guarantee by Lessee. Nothing in this § 12 shall constitute a guarantee by the Lessee of the CSA Indebtedness (as defined in the CSA) or a guarantee of the residual value of any Unit.

## § 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event an "Event of Default") shall occur:

(A) (1) default shall be made in payment of any amount provided for in § 3 hereof, and such default shall continue for 5 days; or (2) default shall be made in payment of any amount provided in § 7 or 17 hereof, and such default shall continue for 5 days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or any interest herein or of the right to possession of any Units;

(C) default shall be made in the observance or performance of any other covenant, condition or agreement on the part of the Lessee contained herein, in the Participation Agreement or the Consent (as defined in the Participation Agreement) and such default shall continue for 20 days after written notice from the Trustee or the Agent to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein, in the Participation Agreement or in any certificate or statement furnished to the Trustee pursuant to or in connection with any such agreement proves untrue in any material respect as of the date of making thereof;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or

(F) any other proceeding shall be commenced by or against the Lessee for any relief which includes or might result in any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and, unless

such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers;

then, in any such case, the Trustee, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof (including without limitation after-tax losses of income tax benefits); or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Trustee, subject to the applicable provisions of law, may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and possess the same free from any right of the Lessee or its successors or assigns to use the Units for any purposes whatever, without penalty; but the Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as liquidated damages for

loss of a bargain and not as a penalty whichever of the following amounts that the Trustee in its sole discretion shall specify, (i) the sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Trustee reasonably estimates to be obtainable for each Unit during such period (such present value to be computed in each case on the basis of a 6% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, which the Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Trustee reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Trustee shall have sold any Unit, the Lessee shall, if the Trustee shall so elect, pay to the Trustee on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Trustee's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Trustee shall not be deemed exclusive, but shall be cumulative and may be

exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

13.3. Failure To Exercise Rights Is Not Waiver.

The failure or delay of the Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default.

The Lessee agrees to furnish written notice to the Trustee and the Agent, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which after notice or lapse of time or both would constitute such an Event of Default, specifying such condition and the nature and status thereof. A "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee contained in this Lease, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§ 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units.

If this Lease shall terminate pursuant to § 13 hereof or Article 16 of the CSA, the Lessee shall forthwith deliver possession of the Units to the Trustee. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, shall comply with all Applicable Laws then in effect and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11 hereof, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as



above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks as the Trustee reasonably may designate;

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Trustee; and

(c) cause the same to be transported to any reasonable interchange point as directed by the Trustee.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction the Trustee shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Units in good order and repair and will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Trustee and, if received by the Lessee, shall be promptly turned over to the Trustee. In the event any Unit is not assembled, delivered and stored as hereinabove provided within 30 days after such termination, the Lessee shall in addition pay to the Trustee for each day thereafter an amount equal to the amount, if any, by which the percentage of the Purchase Price of such Unit for each such day (obtained by dividing the basic lease rate as set forth in § 3.1 hereof for each monthly payment for such Unit by 30) exceeds the actual earnings received by the Trustee on such Unit for each such day. Such payment shall not offset the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this section.

14.2. Trustee Appointed Agent of Lessee. Without limiting the obligations of the Lessee under the foregoing sections, the Lessee hereby irrevocably appoints the Trustee

as its agent and attorney, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit.

#### § 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Trustee without the consent of the Lessee. The Lessee hereby acknowledges the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units. (1) So long as no Event of Default exists hereunder and subject to § 4.2 hereof, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Trustee and the Agent, except as provided in paragraph (2) of this § 15.2; and the Lessee shall not part with the possession or control of or allow to pass out of its possession or control any of the Units without the prior written consent of the Trustee and the Agent, except as provided in said paragraph (2). The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which if unpaid might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Trustee or the Agent or resulting from claims against the Trustee or the Agent not related to the ownership of the Units upon or with respect to any Unit, including any accession thereto, or the interest of the Trustee, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; provided, however, that the Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Agent and the Trustee, materially adversely affect the interest of the Agent or the Trustee in the Equipment, the Agent's interest in the income and proceeds from the Equipment or otherwise under this Lease or the CSA.

(2) So long as no Event of Default exists hereunder and subject to § 4.2 hereof, the Lessee shall be

entitled to the possession and use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which any of their railroad equipment is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or use or permit the assignment, sublease or use of any Unit predominantly outside the United States. Any sublease permitted by this paragraph shall be expressly subordinate to the rights and remedies of the Agent under the CSA and the Trustee under this Lease in respect of the Units covered by such sublease.

15.3. Merger, Acquisition or Consolidation.

Nothing in this § 15 shall be deemed to restrict the right of the Lessee to assign its leasehold interest under this Lease or possession of the Units to any corporation incorporated under the laws of any state of the United States or the District of Columbia into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety and which shall have duly assumed the obligations of the Lessee hereunder; provided that such assignee will not, upon the effectiveness thereof, be in default under any provision of this Lease.

§ 16. RENEWAL OPTIONS

16.1. Renewal for Successive Period. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Trustee not less than 90 days nor more than 270 days prior to the end of the original term of this Lease elect to extend such original term of this Lease in respect of all but not less than all the Units then covered by this Lease for a period of 5 years or such other time acceptable to both the Lessee and Trustee commencing on the scheduled expiration of such original term of this Lease, at a "Fair Market Rental" payable monthly in advance on the first day of each month in each year of such extended term. In the event of any such renewal, the Casualty Value payable

in respect of a Casualty Occurrence involving any Unit shall be as agreed upon by the Trustee and the Lessee.

16.2. Determination of Fair Market Rental.

(1) The Fair Market Rental for each extended term of this Lease shall be equal to the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, either party to such determination may give written notice to the other requesting determination of such value by an appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply to make such appointment to the American Arbitration Association and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If 3 appraisers shall be appointed, the determination of the appraiser which differs most from the other 2 appraisers shall be excluded, the remaining 2 determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any

judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

§ 17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, deliver possession of such Unit to the Trustee upon such storage tracks as the Trustee may reasonably designate or, in the absence of such designation, as the Lessee may select, and permit the Trustee to store such Unit on such tracks for a period not exceeding 6 months and transport the same, at any time within such 6-month period, to any reasonable place or to any connecting carrier for shipment, all as directed by the Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee. Upon delivery pursuant to the preceding sentence, the Lessee shall be absolved of any further responsibility for such Units. During any such storage period the Lessee will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this sentence. Each Unit returned to the Trustee pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet all standards of the Applicable Laws then in effect and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction, the Trustee shall be entitled to a decree against the Lessee requiring specific performance thereof. The Lessee shall be required to pay to the Trustee rent for each day any Unit is not so returned in an amount equal to 0.0285% of the Purchase Price of such Unit for each day from the expiration of the Lease to the date such Unit is returned.

In the event any Unit is not assembled, delivered, stored and transported, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Trustee for each day thereafter an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds the actual earnings received by the Trustee on such Unit for each such day, unless the Trustee shall have received such per diem.

#### § 18. FILING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance of any Unit hereunder, and will undertake the filing required of the Trustee under the CSA; provided, however, that the Lessee shall be entitled to rely on advice from special counsel for the Agent that such filing has occurred. The Lessee will from time to time perform any other act and will execute, acknowledge, deliver and file (and will refile whenever required) any and all further instruments required by law or reasonably requested by the Trustee or the Agent for the purpose of proper protection, to their satisfaction, of their respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Agent and the Trustee evidence of all such filing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Trustee.

#### § 19. INTEREST ON OVERDUE RENTALS

The Lessee shall promptly pay, to the extent legally enforceable, an amount equal to the interest at 12-3/8% per annum on any overdue rentals and other obligations due hereunder for the period of time during which they are overdue.

#### § 20. INCOME TAXES

§ 20.1. Tax Assumptions. This Lease and the CSA have been entered into on the assumptions that (A) the Owner,

as the beneficial owner of the Units, will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof ("Code"), to an owner of property, including without limitation (1) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code ("ADR Deduction") (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 77-10, for property in Asset Guideline Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining-balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum-of-the-years-digits method of depreciation when most beneficial to the Trustee, (c) including in the basis of the Units the entire Purchase Price thereof and all other items properly includible under section 1012 of the Code ("Basis") and (d) taking into account a salvage value, after the reduction allowed by section 167(f) of the Code, of zero, (2) deductions with respect to interest payable under the CSA pursuant to section 163 of the Code ("Interest Deduction") and (3) the 10% investment credit with respect to 100% of the Basis of the Units ("Investment Credit") pursuant to section 38 and related sections of the Code and (B) all amounts includible in gross income by the Trustee or the Owner with respect to this Lease will be treated as income from sources within the United States.

#### 20.2. Lessee's Representations and Agreements.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Trustee or the Owner, and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. The Lessee agrees to keep and make available for inspection and copying by the Trustee, and will on written request by the Trustee provide the Trustee with such records as will enable the Owner to determine whether it is entitled (A) to the full benefit of the ADR Deduction, the Interest Deduction and the Investment Credit with respect to the Units and (B) to treat amounts includible

in gross income with respect to this Lease as income from sources within the United States.

The Lessee represents and warrants that (i) all the Units constitute property the entire Basis of which qualifies for the 10% Investment Credit under section 50 of the Code; (ii) at the time the Trustee becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code, and at the time the Trustee becomes the owner of the Units, the units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Trustee; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; (iv) none of the units will be "used predominantly outside the United States" within the meaning of section 48(a)(2) of the Code; and (v) all items includible in gross income by the Trustee or the Owner with respect to this lease are entitled to treatment as income from sources within the United States.

20.3. Indemnification. If, for any reason whatsoever (other than for the reasons set forth below), all or any part of the ADR Deduction, the Interest Deduction or the Investment Credit with respect to any Unit shall be unavailable in computing each of the items of income, gain, loss, deduction or credit of the Owner or the Trustee, or the Owner shall determine that all amounts includible in gross income with respect to this Lease cannot be treated as income from sources within the United States for any taxable year (or portion thereof) during which this Lease is in effect as the result of the location of any Unit outside the United States, the rental applicable to such Unit set forth in § 3 shall, on the next succeeding rental payment date after written notice to the Lessee by the Trustee of such fact, be increased by such amount as shall be required, in the reasonable opinion of the Owner, to cause the Owner's net after-tax annual cash flow and net after-tax rate of return to be at least the same as such net after-tax annual cash flow and net after-tax rate of return would have been had the ADR Deduction, the Interest Deduction and the Investment Credit been wholly available and had the Trustee and the Owner been entitled to treat all amounts includible in gross income with respect to this Lease as income from sources within the United States; provided, however, that such rental shall not be so increased to the extent that the



ADR Deduction, the Interest Deduction or the Investment Credit with respect to such Unit is unavailable as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit if the Lessee shall have paid to the Trustee the amounts stipulated pursuant to § 7 hereof;

(ii) a voluntary transfer by the Trustee of legal title to such Unit, a voluntary disposition by the Trustee of any interest in such Unit or a voluntary reduction by the Trustee of its interest in the rentals from such Unit under this Lease (except pursuant to an assignment of this Lease to the Agent) unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Owner to claim the ADR Deduction, the Interest Deduction or the Investment Credit on its income tax return for the appropriate year, unless the Owner shall have received an opinion of independent tax counsel to the effect that the Owner is not entitled to claim the ADR Deduction, the Interest Deduction or the Investment Credit; or

(iv) the failure of the Owner to have sufficient liability for Federal income tax against which to credit the Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction.

20.4. Adjustment of Rentals. If, for any reason whatsoever, all or any part of the cost of any improvement and/or addition to a Unit or any expenditure by the Lessee in respect of any Unit or this Lease ("Additional Expenditures") made by the Lessee under and pursuant to the terms of this Lease or otherwise is required to be included in the gross income of the Trustee or the Owner for Federal income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the rentals of the Unit set forth in § 3 hereof shall, on the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice to the Trustee pursuant to the following sentence that such inclusion in the Trustee's or the Owner's gross income is required, be increased to such amount or amounts as shall, in the reasonable opinion of the Owner (after taking into account any present or future tax benefits that the Owner reasonably anticipates it will

derive from its additional investment in the Units by reason of such inclusion, including without limitation any current deductions, future depreciation deductions and investment tax credit), cause the Owner's net after-tax annual cash flow and net after-tax rate of return (calculated on the same basis as used by the Owner in originally evaluating this transaction) to equal the net after-tax annual cash flow and net after-tax rate of return that would have been realized by the Owner if the cost of such Additional Expenditures had not been includible in the Owner's gross income. The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Trustee or the Owner gives the Lessee written notice that the Trustee's or the Owner's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Additional Expenditures which are required to be included in the gross income of the Trustee or the Owner for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Trustee and the Owner describing such Additional Expenditures in reasonable detail.

20.5. Adjustment of Casualty Values. In the event the rental rates shall be adjusted as hereinbefore provided, the Casualty Values set forth in § 7 hereof shall be adjusted accordingly.

20.6. IRS Ruling. The Trustee and the Owner are entitled, but are not required, to request a ruling from the Internal Revenue Service ("Ruling") to the effect, among other things, that this Lease is a true lease, that the Trustee is the owner of the Units and that the Owner has the right to claim the ADR Deduction, the Interest Deduction and the Investment Credit. The Lessee will furnish such documents, records and representations, including but not limited to evidence of the useful life and residual value of the Units sufficient to support the matters claimed in any request for the Ruling, as shall be deemed necessary and appropriate for such request by the Trustee. The Lessee shall join in such request. If the Ruling received by the Trustee and the Owner requires the cost of any Additional Expenditures made by the Lessee to be included in the gross income of the Trustee or the Owner, the Trustee shall, upon request and at the expense of the Lessee, seek a modification of the aforementioned requirement.

20.7. Survival. The Lessee's and the Trustee's agreements to pay any sums which may become payable pursuant to this § 20 shall survive the expiration or other termination of this Lease.

#### § 21. NOTICES

Any document or notice required or permitted to be given to either party hereto shall be deemed to have been given when delivered or mailed, first class, postage prepaid, addressed as follows:

(a) if to the Trustee, at P. O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department;

(b) if to the Lessee, at Checkerboard Square, St. Louis, Missouri 63188, attention of Robert W. Lockwood;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Agent at 510 Locust Street, St. Louis, Missouri 63101, attention of Corporate Trust Department.

#### § 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### § 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Trustee and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall

be valid unless in writing and signed by duly authorized officers for the Trustee and the Lessee.

#### § 24. THIRD-PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto other than the Owner, the Agent, the Investors, the Builder and the permitted successors and assigns of such parties, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party, except as aforesaid.

#### § 25. EXECUTION

This Lease may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent pursuant to the Lease Assignment shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

#### § 26. GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the State of Missouri; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

#### § 27. NO RECOURSE; IMMUNITIES

27.1. No Recourse. No recourse shall be had in respect of any obligation due under this Lease or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owner, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever

released as a condition of and as consideration for the execution of this Lease.

27.2. Immunities. Each representation, warranty and agreement herein made on the part of the financial institution acting as Trustee hereunder is made and intended not as a personal representation, warranty or agreement by said institution or for the purpose or with the intention of binding said institution personally but is made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution or the Owner on account of any representation, warranty or agreement herein of the Trustee (except in the case of gross negligence or wilful misconduct), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under the Lessee making claim hereunder may look to said Trust Estate for satisfaction of the same.

#### § 28. AGREEMENTS FOR BENEFIT OF TRUSTEE'S ASSIGNS

All rights of the Trustee hereunder (including but not limited to its rights under §§ 6, 7, 9, 12, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Trustee and any of the Trustee's assigns (including the Agent).

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity but solely as Trustee,

by

\_\_\_\_\_  
Assistant Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Corporate Trust Officer

RALSTON PURINA COMPANY,

by

*H. J. Cordis* *RCW*  
SENIOR VICE - PRESIDENT

[Corporate Seal]

Attest:

*A. H. Row*  
*Assistant Secretary*

STATE OF MARYLAND,)  
 ) ss.:  
 CITY OF BALTIMORE,)

On this        day of December 1979, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires

STATE OF MISSOURI,)  
~~CITY~~ ) ss.:  
~~COUNTY OF St. Louis,~~)

On this <sup>18th</sup> day of December 1979, before me personally appeared E. J. Cudde, to me personally known, who, being by me duly sworn, says that he is Senior Vice President of RALSTON PURINA COMPANY, a Missouri corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires

D. J. Brewington

My Commission Expires June 23, 1981

APPENDIX A TO LEASE

Units of Railroad Equipment

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plants</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Delivery</u>
100 4750 cubic foot truck gravity discharge covered hopper cars	LO	as set forth in Purchase Order	Oklahoma City, Oklahoma; Longview, Texas	50	PLMX 11186- PLMX 11235	\$44,695	\$2,234,750	December 1979, F.O.B. point of manu- facture



## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
1	108.7850	41	102.1268
2	108.9254	42	101.9927
3	109.0671	43	101.8431
4	109.2102	44	101.6922
5	109.3283	45	101.5399
6	109.4475	46	101.3720
7	109.5416	47	101.2026
8	109.6366	48	101.0316
9	109.7325	49	100.8448
10	109.8031	50	100.6564
11	109.8743	51	100.4662
12	109.9463	52	100.2744
13	109.9926	53	100.0701
14	110.0395	54	99.8641
15	110.0868	55	99.6455
16	110.1346	56	99.4250
17	110.1615	57	99.2025
18	110.1887	58	98.9673
19	110.1949	59	98.7301
20	110.2012	60	98.4906
21	110.2076	61	91.5784
22	110.1927	62	91.3239
23	110.1778	63	91.0671
24	110.1627	64	90.8079
25	110.1263	65	90.5396
26	110.0895	66	90.2688
27	110.0524	67	89.9887
28	110.0151	68	89.7060
29	109.9596	69	89.4205
30	109.9036	70	89.1254
31	109.8292	71	88.8275
32	109.7543	72	88.5268
33	109.6787	73	88.2163
34	109.5845	74	87.9028
35	109.4895	75	87.5863
36	109.3938	76	87.2668
37	102.6093	77	86.9413
38	102.4937	78	86.6126
39	102.3772	79	86.2778
40	102.2597	80	85.9392

## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
81	85.5968	121	61.5709
82	85.2475	122	61.0547
83	84.8943	123	60.5319
84	84.5371	124	60.0023
85	77.5030	125	59.4780
86	77.1348	126	58.9463
87	76.7625	127	58.4193
88	76.3860	128	57.8850
89	76.0062	129	57.3432
90	75.6221	130	56.8060
91	75.2341	131	56.2614
92	74.8411	132	55.7093
93	74.4433	133	55.1616
94	74.0413	134	54.6063
95	73.6343	135	54.0435
96	73.2222	136	53.4731
97	72.8059	137	52.9106
98	72.3845	138	52.3400
99	71.9578	139	51.7770
100	71.5260	140	51.2060
101	71.0933	141	50.6269
102	70.6554	142	50.0553
103	70.2168	143	49.4756
104	69.7721	144	48.8877
105	69.3215	145	48.3072
106	68.8695	146	47.7185
107	68.4114	147	47.1215
108	67.9472	148	46.5162
109	67.4814	149	45.9205
110	67.0094	150	45.3165
111	66.5311	151	44.7221
112	66.0466	152	44.1194
113	65.5640	153	43.5083
114	65.0750	154	42.9066
115	64.5879	155	42.2963
116	64.0944	156	41.6773
117	63.5945	157	41.0677
118	63.0963	158	40.4495
119	62.5916	159	39.8225
120	62.0804	160	39.1867

## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
161	38.5612
162	37.9270
163	37.3030
164	36.6703
165	36.0287
166	35.3974
167	34.7572
168	34.1081
169	33.4691
170	32.8211
171	32.1638
172	31.4973
173	30.8418
174	30.1771
175	29.5235
176	28.8606
177	28.1883
178	27.5271
179	26.8566
180	26.1766